



January 21, 2003

Rebecca Kane  
Office of Compliance(MC 2222A)  
Office of Enforcement and Compliance Assurance,  
US EPA  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**RE: Notice of Availability of Enforcement and Compliance History Online  
Web Site for 60-Day Comment Period**

Dear Ms. Kane:

The National Paint & Coatings Association (NPCA) welcomes this opportunity to comment on the above referenced Web Site (hereinafter referred to as the "ECHO web site").<sup>1</sup> In general, NPCA supports the Environmental Protection Agency's (EPA) initiative to supply the public with readily available compliance information, however, EPA must ensure that this information is accurate as to not mislead the public and cause erroneous charges against facilities that are in compliance with state and federal regulations.

NPCA is aware that the comment period for this Notice of Availability may be extended, therefore, in anticipation of the extension, NPCA reserves the right to supplement our comments if and when the comment period is extended.

**Accurate Compliance Information is Critical**

With respect to compliance reporting, it is vitally important that the data presented on the ECHO website be accurate since any mischaracterizations could lead to erroneous charges against regulated entities by the public. For example, the State of Florida Department of Environmental Protection (DEP) stated on its website that the ECHO website provides an inaccurate picture of Florida's environmental enforcement. Florida DEP review of the ECHO data revealed that of 117 facilities listed by EPA as in "significant non-compliance" 12 were reported in error, 29 are now back in compliance and 76 are under enforcement action by the State or EPA. Contrary to the ECHO website, Florida DEP's Deputy Secretary for Regulatory Programs Allan Bedwell stated that the DEP had addressed every one of these cases. While it may be possible that the original data submitted by Florida was inaccurate, it is the ECHO website and its infrastructure that made the inaccuracies available for public viewing.

<sup>1</sup> 67 Fed. Reg. 70079 (November 20, 2002).



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Several NPCA member companies have reported similar erroneous information on the ECHO web site with regard to their specific facilities. There must be an adequate quality control/quality assurance mechanism to ensure the accuracy of EPA's information before releasing such to the public, and the ECHO web site appears to be lacking such.

There doesn't seem to be a good mechanism in place for removing a site from the list of currently "In-violation" once it is entered onto the list. For example, several member sites are listed as currently in violation from violations that may have occurred several years ago and have long since been corrected. For example, one such site received violations in 1992, finding and orders were signed and the case was settled in 1996 and the facility closed in 1998, however, the plant was still listed as currently in violation.

Other inaccuracies include incorrect EPA ID numbers and facility names and sites listed under company names that do not belong to the company.

### **Violation Policy is Arbitrary**

EPA states that if the EPA Region or authorized state does not receive and enter the information by the designated due date, then the system automatically flags the facility as being in significant noncompliance for not reporting the required pollutant discharge data. EPA also states that it is possible that lack of timely data entry by the State or EPA (and not failure to timely submit by the facility) may cause a facility to be put into the violation category. A default that facilities be labeled as "guilty" or in significant violation just because information was not timely entered by a regulatory agency into a state database or the ECHO database is arbitrary, unfair, and unwarranted. With the ever increasing number of compliance requirements and increased burden on state and EPA regulators, timely data entry is a significant issue, but can not be arbitrarily used as a justification for erroneous violation assertions by EPA.

What is the basis and who determines how a site is listed as having "Current Significant Violations". For example, one member site was listed as having current significant violations, however, the NOV's or orders were handled administratively by the state as minor noncompliance issues and the site is currently meeting the compliance schedule.

There many sites (possibly a majority) that had settled an alleged noncompliance issue through a consent agreement and are currently following the compliance schedule and are in compliance yet they were still listed as significant violators.

### **ECHO Errors and Violation Policy Could Arbitrarily Lead to Increased Scrutiny or Loss of Government Contracts**

A result of inaccurate data or improper assignment of status of violation, is the possibility of the ECHO web site resulting in increased facility scrutiny (i.e. inspections) or loss of government contracts. As stated in EPA's ECHO Frequently Asked Questions Document and in a letter from EPA to trade association representatives dated November

12, 2002, EPA and the States intend to use ECHO data to help determine where to focus compliance assistance and/or enforcement efforts, compliance problems and determine program priorities. If ECHO is to be used for this purpose, it is crucial that EPA ensure that the ECHO website and associated database are accurate. For example, the database should distinguish between an EPA or State allegation and an administrative law or judicial determination. The merits of an agency claim maybe seriously contested. At the least, the database should specify that EPA or a State has made a determination and an opportunity provided to the affected company to state its position, so that an agency allegation is not viewed by the public as an established fact. As stated above, it appears that EPA has not afforded a mechanism with which to do so for the ECHO data. Without such, decisions on where to focus compliance assistance and enforcement and to determine priorities are fatally flawed.

Significant Violators of the CAA or CWA can be barred from governmental contracts. As a result, depending upon specific requirements and procedures, the EPA ECHO website could conceivably have a significant economic impact on a business since the information contained within (accurate or not) could be the determining factor as to whether a government contract is awarded.

#### **Lag Time in ECHO Update is too Great**

Since the ECHO website relies on input from various local and state regulatory agencies, there is a time lag during which the public will be viewing inaccurate data relating to compliance inspections conducted, whether violations were found, or if enforcement actions/penalties were levied, acted upon or eventually dropped, and finally whether or not the facility was back in compliance. Again of the 117 Florida facilities listed by EPA as in "significant non-compliance," the State found that 10% were listed in error, 25% were brought back into compliance but not recorded in ECHO, 73% had either State or local enforcement underway or were being investigated but this was not recorded in ECHO and that 14.5% of the cases were mistakenly reported as being run by the State but in fact were being led by EPA. Thus, regulated entities subjected to increased scrutiny based on erroneous data currently contained on the ECHO web site will not get timely relief as it takes time for information to pass from State and local regulatory agencies to the EPA and then for EPA to update the web site. Given the fact that this time lag also affects actual up dates to information that may be correct, regulated entities are negatively impacted doubly by EPA current process and the public can not be assured that any of the information collected from the site is accurate.

#### **The ECHO Website Text Does Not Adequately Explain the Data**

The ECHO website data contains a significant amount of unknown or unexplained acronyms and in general may be confusing to the public, additional explanation of acronyms and terminology is needed. In order to provide the public with meaningful data it must be accurate, as stated previously, and it must be placed in the proper context.

EPA must do a better job of explaining the data on the ECHO web site in order for the public to have a clear understanding of the reports.

The word "Violation" is used in the database as if it were a proven fact. A significant majority of what EPA refers to as a "Violation" is in fact an EPA allegation of a violation that has not been proven. Unless an administrative tribunal or court has determined there was in fact a violation, EPA's database should add the word "Alleged" to "Violation". It is misleading and prejudicial to a company for the database to use the word "Violation" without clarifying these distinctions.

EPA uses the term "Penalty" without distinguishing between an alleged penalty, a penalty agreed to be paid solely as a part of a settlement, or a penalty actually determined by a court. For example it is more accurate to use the term "alleged penalty" or "penalty claim" unless an actual judicial determination has been made. Also "assessed penalty" often means "alleged penalty". It is misleading and prejudicial to just use the word "penalty" without specifying whether it's a claim, settlement, or judicial determination. Also where a penalty is paid as part of a settlement, the words "paid as part of a settlement" should be used not "assessed penalty".

EPA uses the term "Significant Non-Compliance" without including the criteria it uses to make the determinations. In addition, the reference to "Significant Non-Compliance" comes across as a proven or decided fact, rather than as an Agency determination. While EPA references the fact that each program uses a different criteria for "Significant Non-Compliance", the website should still clarify that this is an agency claim or determination unless the underlying claims have been subject to a judicial determination. In addition, there should be an opportunity to comment on the EPA program criteria used to determine "Significant Non-Compliance".

The links to the definition page don't go directly to the specific definition and the definitions are vague.

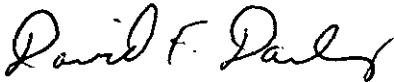
### **Security Concerns Have Not Been Appropriately Addressed**

NPCA is concerned that the ECHO web site may be used illicitly as the ECHO web site allows anyone to look-up a facility via the types of products manufactured (i.e. SIC), identify where the facility is located (in addition to other facilities in the area) as well as identify the population density in the vicinity of the facility. Given the significant events of September 11, 2001, and the increased awareness on security of facilities, especially chemical facilities, in the United States, NPCA is concerned that EPA has not appropriately addressed the security impacts of the ECHO web site's information. Collectively, the information contained on the ECHO web site would be very helpful in the preparation of an attack on one of these facilities, yet all the information is not necessary to appropriately inform the public on compliance matters. At the very least,

therefore NPCA believes that EPA should eliminate the population density and MAP feature of the ECHO website.

NPCA greatly appreciates the opportunity to comment on the ECHO web site. In advance, thank you for your consideration of our comments. If you should have any questions pertaining to our submitted comments, please feel free to give either of us a call at 202-462-6272.

Sincerely,



David F. Darling, P.E., Director  
Environmental Affairs



Alison A. Keane, Counsel  
Government Affairs

*\*\* Sent Via E-mail and Regular Mail \*\**